



Reprinted  
February 27, 2001

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## SENATE BILL No. 562

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DIGEST OF SB 562 (Updated February 26, 2001 4:11 PM - DI 92)

**Citations Affected:** IC 4-4; IC 4-21.5; IC 5-10.2; IC 5-10.3; IC 5-14; IC 6-3.1; IC 21-6.1; noncode.

**Synopsis:** Venture capital investments. Establishes the Indiana venture capital fund. Authorizes the public employees' retirement fund and the teachers' retirement fund to invest in the Indiana venture capital fund. Authorizes the Indiana venture capital fund to sell contingent tax credits to public utilities to obtain capital to be used to invest in new high technology ventures in Indiana. Authorizes the Indiana venture capital fund to invest in local certified equity pools and other investment groups. Requires each one dollar of investment from the Indiana venture capital fund to be matched by two dollars of private investment. Establishes the Indiana investment company. Permits the Indiana venture capital fund to employ alternative private capital investment advisors under certain circumstances.

**Effective:** January 1, 2002.

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**Johnson, Simpson, Clark**

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January 23, 2001, read first time and referred to Committee on Energy and Economic Development.  
February 13, 2001, reported favorably — Do Pass.  
February 26, 2001, read second time, amended, ordered engrossed.

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SB 562—LS 8099/DI 92+



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February 27, 2001

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

## SENATE BILL No. 562

A BILL FOR AN ACT to amend the Indiana Code concerning economic development.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 4-4-30 IS ADDED TO THE INDIANA CODE AS  
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3 JANUARY 1, 2002]:

4 **Chapter 30. Indiana Venture Capital Fund**

5 **Sec. 1. (a) As used in this chapter, "fund" means the Indiana**  
6 **venture capital fund established by section 2 of this chapter.**

7 **(b) As used in this chapter, "equity capital" means capital**  
8 **invested in common or preferred stock, royalty rights, limited**  
9 **partnership interests, or any other security or right that is evidence**  
10 **of ownership in a private business.**

11 **(c) As used in this chapter, "investor group" means an**  
12 **individual, a corporation, a partnership, a local certified equity**  
13 **pool, or another lawfully organized entity.**

14 **(d) As used in this chapter, "local certified equity pool" means**  
15 **a for-profit partnership, corporation, trust, or limited liability**  
16 **company that:**

17 **(1) is located, headquartered, and registered to conduct**

SB 562—LS 8099/DI 92+



business in Indiana;

(2) has as its primary business activity the investment of cash in qualified Indiana businesses; and

(3) is certified by the fund as meeting the criteria of this article.

(e) As used in this chapter, "near-equity capital" means capital invested in unsecured, undersecured, subordinated, or convertible loans or debt securities.

(f) As used in this chapter, "private investment" means an investment of money that:

(1) is not derived from federal, state, or local taxes; and

(2) is not made by a person owning more than five percent (5%) of the company seeking an investment from the Indiana venture capital fund.

(g) As used in this chapter, "qualified Indiana business" means an independently owned and operated business that:

(1) is a seed, start-up, or early stage venture as defined by the fund in its written guidelines, taking into account the United States Small Business Administration's definition of a small business (13 CFR 121.301(c));

(2) is a high growth company with high skilled jobs (as defined in IC 4-4-10.9-9.5);

(3) has its headquarters in Indiana;

(4) employs at least seventy percent (70%) of its employees in Indiana, ninety-five percent (95%) of which are Indiana residents;

(5) is in need of venture capital and is unable to obtain capital using conventional financing;

(6) is not involved in:

(A) real estate;

(B) real estate development;

(C) insurance;

(D) professional services provided by:

(i) accountants;

(ii) lawyers; or

(iii) physicians;

(E) retail sales, except when the primary purpose of the business is developing or supporting electronic commerce using the Internet; or

(F) gas and oil exploration.

Sec. 2. (a) There is created a body politic and corporate, not a state agency but an independent instrumentality exercising



essential public functions, to be known as the Indiana venture capital fund.

(b) The fund is composed of the following nine (9) members:

(1) The lieutenant governor, or the lieutenant governor's designee.

(2) The treasurer of state, or the treasurer of state's designee.

(3) Seven (7) members appointed by the governor, not more than four (4) of whom may be from the same political party.

(c) All members must be residents of the state.

Sec. 3. All appointments to the fund are for terms of four (4) years. Each member holds office for the term of the appointment and continues to serve after the member's appointment expires until the member's successor is appointed and qualified. Any member shall be eligible for reappointment. Any member may be removed from office by the governor and serves at the governor's pleasure.

Sec. 4. (a) The governor shall name the chairperson from among the members to serve at the governor's pleasure. The members shall elect from among their number a vice chairperson and other officers as they determine.

(b) The members of the fund appointed by the governor under section 2(b)(3) of this chapter are entitled to a per diem allowance for attending meetings equal to that provided by law for members of the general assembly. All the members of the fund are entitled to receive reimbursement for actual and necessary expenses on the same basis as state employees.

Sec. 5. The powers of the fund are vested in the members. Five (5) members of the fund constitute a quorum for the transaction of business. The affirmative vote of at least five (5) members is necessary for any action to be taken by the fund. A vacancy in the membership of the fund does not impair the right of a quorum to exercise all rights and perform all duties of the fund.

Sec. 6. Meetings of the members of the fund shall be held at the call of the chairperson or whenever any three (3) members so request. The members shall meet at least once every three (3) months to attend to the business of the fund.

Sec. 7. The lieutenant governor shall serve as the secretary-manager of the fund. The secretary-manager shall administer, manage, and direct the affairs and activities of the fund in accordance with the policies and under the control and direction of the members. The secretary-manager shall approve all accounts for salaries, allowable expenses of the fund or of any employee or



1 consultant, and expenses incidental to the operation of the fund.  
 2 The secretary-manager shall perform other duties as directed by  
 3 the members in carrying out the purposes of this chapter.

4 **Sec. 8. (a) The secretary-manager shall do the following:**

5 (1) Attend the meetings of the fund.

6 (2) Keep a record of the proceedings of the fund.

7 (3) Maintain and be custodian of all books, documents, and  
 8 papers filed with the fund and its official seal.

9 (b) The secretary-manager may make copies of all minutes and  
 10 other records and documents of the fund and may give certificates  
 11 under seal of the fund to the effect that the copies are true copies.  
 12 All persons dealing with the fund may rely upon such certificates.

13 **Sec. 9. The fund may, without the approval of the attorney**  
 14 **general or any other state officer, employ legal counsel, technical**  
 15 **experts, and such other officers, agents, and employees, permanent**  
 16 **or temporary, as it considers necessary to carry out the efficient**  
 17 **operation of the fund, and shall determine their qualifications,**  
 18 **duties, compensation, and terms of service. The members may**  
 19 **delegate to the secretary-manager, or one (1) or more agents or**  
 20 **employees of the fund, such administrative duties as they consider**  
 21 **proper, including the powers of the fund set forth in this section.**  
 22 **Employees of the fund shall not be considered employees of the**  
 23 **state.**

24 **Sec. 10. Any member or employee of the fund who has, will**  
 25 **have, or later acquires an interest, direct or indirect, in any**  
 26 **transaction with the fund shall immediately disclose the nature and**  
 27 **extent of the interest in writing to the fund as soon as the member**  
 28 **or employee has knowledge of the actual or prospective interest.**  
 29 **The disclosure shall be announced in open meeting and entered**  
 30 **upon the minutes of the fund. Upon disclosure, the member or**  
 31 **employee shall not participate in any action by the fund**  
 32 **authorizing the transaction. However, such an interest does not**  
 33 **invalidate actions by the fund with the participation of the**  
 34 **disclosing member before the time the member became aware of**  
 35 **the interest or should reasonably have become aware of the**  
 36 **interest.**

37 **Sec. 11. Notwithstanding the provisions of any other law, no**  
 38 **officer or employee of the state forfeits office or employment by**  
 39 **accepting membership in the fund or by providing services to the**  
 40 **fund.**

41 **Sec. 12. Each member of the fund shall execute a surety bond in**  
 42 **the penal sum of twenty-five thousand dollars (\$25,000). To the**



1 extent any member of the fund is already covered by a bond  
 2 required by state law, the member need not obtain another bond  
 3 as long as the bond required by state law is in at least the penal  
 4 sum specified in this section and covers the member's activities for  
 5 the fund. Instead of a bond, the chairperson of the fund may  
 6 execute a blanket surety bond covering each member and the  
 7 employees or other officers of the fund. Each surety bond must be  
 8 conditioned upon the faithful performance of the duties of the  
 9 office of the member and shall be issued by a surety company  
 10 authorized to transact business in this state as surety. At all times  
 11 after the issuance of any surety bonds, each member shall maintain  
 12 the surety bonds in full force and effect. All costs of the surety  
 13 bonds shall be borne by the fund.

14 Sec. 13. (a) The fund is granted all powers necessary or  
 15 appropriate to carry out and effectuate its public and corporate  
 16 purposes under this chapter, including but not limited to the  
 17 following:

18 (1) Have perpetual succession as a body politic and corporate  
 19 and an independent instrumentality exercising essential public  
 20 functions.

21 (2) Without complying with IC 4-22-2, adopt, amend, and  
 22 repeal bylaws, rules, and regulations not inconsistent with this  
 23 chapter, IC 4-4-21, and IC 15-7-5 and necessary or convenient  
 24 to regulate its affairs and to carry into effect the powers,  
 25 duties, and purposes of the fund and conduct its business.

26 (3) Sue and be sued in its own name.

27 (4) Have an official seal and alter it at will.

28 (5) Maintain an office or offices at a place or places within  
 29 Indiana as it may designate.

30 (6) Make and execute contracts and all other instruments  
 31 necessary or convenient for the performance of its duties and  
 32 the exercise of its powers and functions under this chapter.

33 (7) Employ attorneys, accountants, financial experts, and  
 34 other advisers, consultants, and agents as may be necessary in  
 35 its judgment and to fix their compensation.

36 (8) Procure insurance against any loss in connection with its  
 37 property and other assets, including loans and loan notes in  
 38 amounts and from insurers as it may consider advisable.

39 (b) The fund's powers under this chapter shall be interpreted  
 40 broadly to effectuate the purposes of this chapter and may not be  
 41 construed as a limitation of powers.

42 Sec. 14. (a) The fund shall:



(1) adopt:

(A) rules under IC 4-22-2; or

(B) a policy;

establishing a code of ethics for its employees; or

(2) operate under the jurisdiction and rules adopted by the state ethics commission.

(b) A code of ethics adopted by rule or policy under this section must be consistent with state law and approved by the governor.

Sec. 15. The assets of the fund consist of the following:

(1) capital obtained from the pledge of contingent tax credits authorized under IC 6-3.1-22; and

(2) money invested by the public employees' retirement fund or the teachers' retirement fund.

Sec. 16. (a) The fund shall solicit proposals from qualified investor groups for investment of capital in qualified Indiana business in accordance with the requirements of this chapter. The board shall establish criteria for selection of investor groups considered qualified to generate capital for investment in a manner that will result in significant potential to create jobs and to diversify the economy of Indiana.

(b) The criteria must include:

(1) the applicant's:

(A) level of experience;

(B) quality of management;

(C) investment philosophy and success;

(D) historical investment performance; and

(E) probability of success in fundraising;

(2) the amount and timing of fees to be paid; and

(3) other investment criteria commonly used in professional portfolio management as considered appropriate by the fund.

Sec. 17. An investment by the fund in a qualified Indiana business is limited by the following:

(1) Each dollar of the fund's investment must be matched by at least two dollars (\$2) of private investment; and

(2) the fund's investment in any one qualified Indiana business may not exceed ten percent (10%) of the fund's assets.

SECTION 2. IC 4-21.5-2-5, AS AMENDED BY P.L.172-1999, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2002]: Sec. 5. This article does not apply to the following agency actions:

(1) The issuance of a warrant or jeopardy warrant for the collection of taxes.



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- 1 (2) A determination of probable cause or no probable cause by the
- 2 civil rights commission.
- 3 (3) A determination in a factfinding conference of the civil rights
- 4 commission.
- 5 (4) A personnel action, except review of a personnel action by the
- 6 state employees appeals commission under IC 4-15-2 or a
- 7 personnel action that is not covered by IC 4-15-2 but may be
- 8 taken only for cause.
- 9 (5) A resolution, directive, or other action of any agency that
- 10 relates solely to the internal policy, organization, or procedure of
- 11 that agency or another agency and is not a licensing or
- 12 enforcement action. Actions to which this exemption applies
- 13 include the statutory obligations of an agency to approve or ratify
- 14 an action of another agency.
- 15 (6) An agency action related to an offender within the jurisdiction
- 16 of the department of correction.
- 17 (7) A decision of the department of commerce, the department of
- 18 environmental management, the enterprise zone board, the tourist
- 19 information and grant fund review committee, the Indiana
- 20 development finance authority, the Indiana business
- 21 modernization and technology corporation, the corporation for
- 22 innovation development, the Indiana small business development
- 23 corporation, **the Indiana venture capital fund**, or the lieutenant
- 24 governor that concerns a grant, loan, bond, tax incentive, or
- 25 financial guarantee.
- 26 (8) A decision to issue or not issue a complaint, summons, or
- 27 similar accusation.
- 28 (9) A decision to initiate or not initiate an inspection,
- 29 investigation, or other similar inquiry that will be conducted by
- 30 the agency, another agency, a political subdivision, including a
- 31 prosecuting attorney, a court, or another person.
- 32 (10) A decision concerning the conduct of an inspection,
- 33 investigation, or other similar inquiry by an agency.
- 34 (11) The acquisition, leasing, or disposition of property or
- 35 procurement of goods or services by contract.
- 36 (12) Determinations of the department of workforce development
- 37 under IC 22-4-18-1(g)(1), IC 22-4-40, or IC 22-4-41.
- 38 (13) A decision under IC 9-30-12 of the bureau of motor vehicles
- 39 to suspend or revoke the driver's license, a driver's permit, a
- 40 vehicle title, or a vehicle registration of an individual who
- 41 presents a dishonored check.
- 42 (14) An action of the department of financial institutions under

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IC 28-1-3.1 or a decision of the department of financial institutions to act under IC 28-1-3.1.

(15) A determination by the NVRA official under IC 3-7-11 concerning an alleged violation of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg) or IC 3-7.

(16) Imposition of a civil penalty under IC 4-20.5-6-8 if the rules of the Indiana department of administration provide an administrative appeals process.

SECTION 3. IC 5-10.2-2-2.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2002]: Sec. 2.5. Each board may establish investment guidelines and limits on all types of investments (including, but not limited to, stocks, ~~and~~ bonds, **and the Indiana venture capital fund established under IC 4-4-30**) and take other actions necessary to fulfill its duty as a fiduciary for all funds under its control, subject to the limitations and restrictions set forth in IC 5-10.3-5-3 and IC 21-6.1-3-9.

SECTION 4. IC 5-10.2-9 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2002]:

**Chapter 9. Indiana Investment Company**

**Sec. 1. (a) As used in this chapter, "company" refers to the Indiana investment company established by section 2 of this chapter.**

**(b) As used in this chapter, "equity capital" means capital invested in common or preferred stock, royalty rights, limited partnership interests, or any other security or right that is evidence of ownership in a private business.**

**(c) As used in this chapter, "fund" means the public employees' retirement fund and the Indiana state teachers' retirement fund.**

**(d) As used in this chapter, "investor group" means an individual, a corporation, a partnership, or another lawfully organized entity that is in the business of investing in private capital markets.**

**(e) As used in this chapter, "near-equity capital" means capital invested in unsecured, undersecured, subordinated, or convertible loans or debt securities.**

**(f) As used in this chapter, "private capital" means equity capital and near-equity capital.**

**Sec. 2. (a) There is created a body politic and corporate, not a state agency but an independent instrumentality exercising essential public functions, to be known as the Indiana investment company.**

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(b) The company consists of the following nine (9) members:

(1) The lieutenant governor, or the lieutenant governor's designee, who shall serve as the chair.

(2) The treasurer of state, or the treasurer of state's designee.

(3) The president of the board of trustees of the public employees' retirement fund.

(4) The president of the board of trustees of the Indiana state teachers' retirement fund.

(5) Two (2) members with experience in private capital markets appointed by the governor.

(6) One (1) member with experience in financial management appointed by the governor.

(7) One (1) member who is a member with at least ten (10) years of creditable service of either the public employees' retirement fund or the Indiana state teachers' retirement fund appointed by the governor.

(8) One (1) member appointed by the governor.

(c) All members must be residents of Indiana. No more than three (3) of the members appointed by the governor may belong to the same political party.

Sec. 3. All appointments to the company are for terms of four (4) years. Each member holds office for the term of the appointment and continues to serve after the member's appointment expires until the member's successor is appointed and qualified. Any member shall be eligible for reappointment.

Sec. 4. (a) The members shall elect from among their number a vice chair and other officers as they determine.

(b) Members of the company who are not state employees are entitled to a per diem allowance for attending meetings equal to that provided by law for members of the general assembly. All the members of the company are entitled to receive reimbursement for actual and necessary expenses on the same basis as state employees.

Sec. 5. The powers of the company are vested in the members. Five (5) members of the company constitute a quorum for the transaction of business. The affirmative vote of at least five (5) members is necessary for any action to be taken by the company. A vacancy in the membership of the company does not impair the right of a quorum to exercise all rights and perform all duties of the company.

Sec. 6. Meetings of the members of the company shall be held at the call of the chair or whenever any two (2) members so request.



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1 The members shall meet at least once every three (3) months to  
2 attend to the business of the company.

3 Sec. 7. The executive director employed by the company under  
4 section 12 of this chapter shall serve as the manager of the  
5 company and shall administer, manage, and direct the affairs and  
6 activities of the company in accordance with the policies and under  
7 the control and direction of the members. The manager shall  
8 approve all accounts for salaries, allowable expenses of the  
9 company or of any employee or consultant, and expenses incidental  
10 to the operation of the company. The manager shall perform other  
11 duties as directed by the members in carrying out the purposes of  
12 this chapter.

13 Sec. 8. (a) The manager shall do the following:

14 (1) Attend the meetings of the company.

15 (2) Keep a record of the proceedings of the company.

16 (3) Maintain and be custodian of all books, documents, and  
17 papers filed with the company and its official seal.

18 (b) The manager may make copies of all minutes and other  
19 records and documents of the company and may give certificates  
20 under seal of the company to the effect that the copies are true  
21 copies. All persons dealing with the company may rely upon such  
22 certificates.

23 Sec. 9. The company may, without the approval of the attorney  
24 general or any other state officer, employ legal counsel, technical  
25 experts, and such other officers, agents, and employees, permanent  
26 or temporary, as it considers necessary to carry out the efficient  
27 operation of the company and shall determine their qualifications,  
28 duties, compensation, and terms of service. The members may  
29 delegate to the manager or one (1) or more agents or employees of  
30 the company such administrative duties as they consider proper,  
31 including the powers of the company set forth in this section.

32 Sec. 10. Any member or employee of the company who has, will  
33 have, or later acquires an interest, direct or indirect, in any  
34 transaction or entity which the company has recommended or  
35 manages shall immediately disclose the nature and extent of the  
36 interest in writing to the company as soon as the member or  
37 employee has knowledge of the actual or prospective interest. The  
38 disclosure shall be announced in open meeting and entered upon  
39 the minutes of the company. Upon disclosure, the member or  
40 employee shall not participate in any action by the company  
41 recommending or managing the transaction or entity. However,  
42 such an interest does not invalidate actions by the company with



the participation of the disclosing member before the time the member became aware of the interest or should reasonably have become aware of the interest.

Sec. 11. Notwithstanding the provisions of any other law, no officer or employee of the state forfeits office or employment by becoming a member of the company or by providing services to the company.

Sec. 12. (a) The company is granted all powers necessary or appropriate to carry out and effectuate its public and corporate purposes under this chapter, including but not limited to the following:

(1) Have perpetual succession as a body politic and corporate and an independent instrumentality exercising essential public functions.

(2) Without complying with IC 4-22-2, adopt, amend, and repeal bylaws, rules, and regulations not inconsistent with this chapter and necessary or convenient to regulate its affairs and to carry into effect the powers, duties, and purposes of the company and conduct its business.

(3) Sue and be sued in its own name.

(4) Have an official seal and alter it at will.

(5) Maintain an office or offices at a place or places within Indiana as it may designate.

(6) Make and execute contracts and all other instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions under this chapter.

(7) Employ attorneys, accountants, financial experts, and other advisers, consultants, and agents as may be necessary in its judgment and to fix their compensation.

(8) Procure insurance against any loss in connection with its property and other assets, including loans and loan notes in amounts and from insurers as it may consider advisable.

(9) Employ an executive director and such clerical and other employees as may be necessary to carry out its duties under this chapter.

(10) Adopt budgets to carry out its duties under this chapter.

(b) The company's powers under this chapter shall be interpreted broadly to effectuate the purposes of this chapter and may not be construed as a limitation of powers.

Sec. 13. (a) The company shall:

(1) adopt:

(A) rules under IC 4-22-2; or



- 1 (B) a policy;  
 2 establishing a code of ethics for its employees; or  
 3 (2) operate under the jurisdiction and rules adopted by the  
 4 state ethics commission.
- 5 (b) A code of ethics adopted by rule or policy under this section  
 6 must be consistent with state law and approved by the governor.
- 7 Sec. 14. (a) The company is the exclusive agent of the fund for  
 8 the management and investment of the fund's assets allocated to  
 9 private capital.
- 10 (b) Notwithstanding subsection (a), the boards of trustees of the  
 11 fund may, consistent with investment policies adopted by the  
 12 trustees of the fund, employ an alternative private capital  
 13 investment advisor instead of the company.
- 14 (c) To employ an alternative private capital investment advisor  
 15 under subsection (b), the boards of trustees of the fund must adopt  
 16 a resolution, finding that:
- 17 (1) the company is not qualified to carry out the duties  
 18 under Section 15 of this chapter; and  
 19 (2) that the alternative private capital investment advisor,  
 20 which the boards of trustees of the fund desire to engage,  
 21 has its headquarters in Indiana.
- 22 Sec. 15. The duties of the company include the following:
- 23 (1) The development of an allocation strategy for the assets of  
 24 the fund allocated to investment in private capital.  
 25 (2) The design of programs for the management of the assets  
 26 of the fund allocated to investment in private capital.  
 27 (3) The solicitation of proposals from qualified investor  
 28 groups for the investment in private capital in accordance  
 29 with the programs and strategies developed in subdivisions (1)  
 30 and (2).  
 31 (4) The screening and evaluation of proposals received from  
 32 qualified investor groups for the investment in private capital  
 33 in accordance with the programs and strategies developed in  
 34 subdivisions (1) and (2).  
 35 (5) The preparation of investment recommendations based on  
 36 the proposals received from qualified investor groups for the  
 37 investment in private capital.  
 38 (6) The presentation to the boards of trustees of the fund the  
 39 investment recommendations based on the proposals received  
 40 from qualified investor groups for the investment in private  
 41 capital.  
 42 (7) As the agent for the fund, the negotiation of participation

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1 agreements or other arrangements for investment by the fund  
2 in private capital.

3 (8) The administration of the participation agreements or  
4 other arrangements involving the investment of the assets of  
5 the fund in private capital.

6 (9) The monitoring of the performance of the private capital  
7 investments made by the fund.

8 (10) The preparation of and presentation to the boards of  
9 trustees of the fund reports concerning the performance of the  
10 fund's private capital investments.

11 (11) Any other activities necessary to implement the fund's  
12 investment in private capital.

13 **Sec. 16. The allocation of the assets of the fund to private capital**  
14 **and the investment decisions concerning those allocations remain**  
15 **the responsibility of the boards of trustees of the fund and are not**  
16 **the responsibility of the company.**

17 **Sec. 17. The company may negotiate with the fund a reasonable**  
18 **fee for its services based on the dollar value of the assets allocated**  
19 **to private capital investment by the fund.**

20 **Sec. 18. For purposes of IC 34-13-2, IC 34-13-3, and IC 34-13-4,**  
21 **the company and all employees of the company are public**  
22 **employees (as defined in IC 34-6-2-38).**

23 **Sec. 19. The company shall submit an annual report of the**  
24 **company's activities to the pension management oversight**  
25 **commission established under IC 2-5-12 before September 1 of**  
26 **each year.**

27 **SECTION 5. IC 5-10.3-5-3 IS AMENDED TO READ AS**  
28 **FOLLOWS [EFFECTIVE JANUARY 1, 2002]: Sec. 3. (a) The board**  
29 **shall invest its assets with the care, skill, prudence, and diligence that**  
30 **a prudent person acting in a like capacity and familiar with such**  
31 **matters would use in the conduct of an enterprise of a like character**  
32 **with like aims. The board shall also diversify such investments in**  
33 **accordance with prudent investment standards.**

34 **(b) The board may invest up to five percent (5%) of the excess of its**  
35 **cash working balance in debentures of the corporation for innovation**  
36 **development subject to IC 30-4-3-3.**

37 **(c) The board is not subject to IC 4-13, IC 4-13.6, and IC 5-16 when**  
38 **managing real property as an investment. Any management agreements**  
39 **entered into by the board must ensure that the management agent acts**  
40 **in a prudent manner with regard to the purchase of goods and services.**  
41 **Contracts for the management of investment property shall be**  
42 **submitted to the governor, the attorney general, and the budget agency**



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for approval. A contract for management of real property as an investment:

(1) may not exceed a four (4) year term and must be based upon guidelines established by the board;

(2) may provide that the property manager may collect rent and make disbursements for routine operating expenses such as utilities, cleaning, maintenance, and minor tenant finish needs;

(3) must establish, consistent with the board's duty under IC 30-4-3-3(c), guidelines for the prudent management of expenditures related to routine operation and capital improvements; and

(4) may provide specific guidelines for the board to purchase new properties, contract for the construction or repair of properties, and lease or sell properties without individual transactions requiring the approval of the governor, the attorney general, the Indiana department of administration, and the budget agency. However, each individual contract involving the purchase or sale of real property is subject to review and approval by the attorney general at the specific request of the attorney general.

(d) Whenever the board takes bids in managing or selling real property, the board shall require a bid submitted by a trust (as defined in IC 30-4-1-1(a)) to identify all of the following:

(1) Each beneficiary of the trust.

(2) Each settlor empowered to revoke or modify the trust.

**(e) If, in accordance with its investment policy, the board makes a decision to invest a portion of its assets in alternative investment vehicles, the board shall invest at least ten percent (10%) of the amount allocated to alternative investment vehicles in the Indiana venture capital fund established under IC 4-4-30.**

SECTION 6. IC 5-14-1.5-6.1, AS AMENDED BY P.L.37-2000, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2002]: Sec. 6.1. (a) As used in this section, "public official" means a person:

(1) who is a member of a governing body of a public agency; or  
(2) whose tenure and compensation are fixed by law and who executes an oath.

(b) Executive sessions may be held only in the following instances:

(1) Where authorized by federal or state statute.

(2) For discussion of strategy with respect to any of the following:

(A) Collective bargaining.

(B) Initiation of litigation or litigation that is either pending or has been threatened specifically in writing.



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(C) The implementation of security systems.

(D) The purchase or lease of real property by the governing body up to the time a contract or option to purchase or lease is executed by the parties.

However, all such strategy discussions must be necessary for competitive or bargaining reasons and may not include competitive or bargaining adversaries.

(3) For discussion of the assessment, design, and implementation of school safety and security measures, plans, and systems.

(4) Interviews with industrial or commercial prospects or agents of industrial or commercial prospects by the department of commerce, the Indiana development finance authority, the film commission, the Indiana business modernization and technology corporation, **the Indiana venture capital fund, the Indiana investment company**, or economic development commissions.

(5) To receive information about and interview prospective employees.

(6) With respect to any individual over whom the governing body has jurisdiction:

(A) to receive information concerning the individual's alleged misconduct; and

(B) to discuss, before a determination, the individual's status as an employee, a student, or an independent contractor who is a physician.

(7) For discussion of records classified as confidential by state or federal statute.

(8) To discuss before a placement decision an individual student's abilities, past performance, behavior, and needs.

(9) To discuss a job performance evaluation of individual employees. This subdivision does not apply to a discussion of the salary, compensation, or benefits of employees during a budget process.

(10) When considering the appointment of a public official, to do the following:

(A) Develop a list of prospective appointees.

(B) Consider applications.

(C) Make one (1) initial exclusion of prospective appointees from further consideration.

Notwithstanding IC 5-14-3-4(b)(12), a governing body may release and shall make available for inspection and copying in accordance with IC 5-14-3-3 identifying information concerning prospective appointees not initially excluded from further

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consideration. An initial exclusion of prospective appointees from further consideration may not reduce the number of prospective appointees to fewer than three (3) unless there are fewer than three (3) prospective appointees. Interviews of prospective appointees must be conducted at a meeting that is open to the public.

(11) To train school board members with an outside consultant about the performance of the role of the members as public officials.

(12) To prepare or score examinations used in issuing licenses, certificates, permits, or registrations under IC 15-5-1.1 or IC 25.

(c) A final action must be taken at a meeting open to the public.

(d) Public notice of executive sessions must state the subject matter by specific reference to the enumerated instance or instances for which executive sessions may be held under subsection (b). The requirements stated in section 4 of this chapter for memoranda and minutes being made available to the public is modified as to executive sessions in that the memoranda and minutes must identify the subject matter considered by specific reference to the enumerated instance or instances for which public notice was given. The governing body shall certify by a statement in the memoranda and minutes of the governing body that no subject matter was discussed in the executive session other than the subject matter specified in the public notice.

(e) A governing body may not conduct an executive session during a meeting, except as otherwise permitted by applicable statute. A meeting may not be recessed and reconvened with the intent of circumventing this subsection.

SECTION 7. IC 5-14-3-4, AS AMENDED BY P.L.37-2000, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2002]: Sec. 4. (a) The following public records are excepted from section 3 of this chapter and may not be disclosed by a public agency, unless access to the records is specifically required by a state or federal statute or is ordered by a court under the rules of discovery:

(1) Those declared confidential by state statute.

(2) Those declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute.

(3) Those required to be kept confidential by federal law.

(4) Records containing trade secrets.

(5) Confidential financial information obtained, upon request, from a person. However, this does not include information that is

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1 filed with or received by a public agency pursuant to state statute.

2 (6) Information concerning research, including actual research  
3 documents, conducted under the auspices of an institution of  
4 higher education, including information:

5 (A) concerning any negotiations made with respect to the  
6 research; and

7 (B) received from another party involved in the research.

8 (7) Grade transcripts and license examination scores obtained as  
9 part of a licensure process.

10 (8) Those declared confidential by or under rules adopted by the  
11 supreme court of Indiana.

12 (9) Patient medical records and charts created by a provider,  
13 unless the patient gives written consent under IC 16-39.

14 (10) Application information declared confidential by the  
15 twenty-first century research and technology fund board under  
16 IC 4-4-5.1.

17 (b) Except as otherwise provided by subsection (a), the following  
18 public records shall be excepted from section 3 of this chapter at the  
19 discretion of a public agency:

20 (1) Investigatory records of law enforcement agencies. However,  
21 certain law enforcement records must be made available for  
22 inspection and copying as provided in section 5 of this chapter.

23 (2) The work product of an attorney representing, pursuant to  
24 state employment or an appointment by a public agency:

25 (A) a public agency;

26 (B) the state; or

27 (C) an individual.

28 (3) Test questions, scoring keys, and other examination data used  
29 in administering a licensing examination, examination for  
30 employment, or academic examination before the examination is  
31 given or if it is to be given again.

32 (4) Scores of tests if the person is identified by name and has not  
33 consented to the release of his scores.

34 (5) The following:

35 (A) Records relating to negotiations between the department  
36 of commerce, the Indiana development finance authority, the  
37 film commission, the Indiana business modernization and  
38 technology corporation, **the Indiana venture capital fund,**  
39 **the Indiana investment company,** or economic development  
40 commissions with industrial, research, or commercial  
41 prospects, if the records are created while negotiations are in  
42 progress.

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(B) Notwithstanding clause (A), the terms of the final offer of public financial resources communicated by the department of commerce, the Indiana development finance authority, the film commission, the Indiana business modernization and technology corporation, **the Indiana venture capital fund, the Indiana investment company**, or economic development commissions to an industrial, a research, or a commercial prospect shall be available for inspection and copying under section 3 of this chapter after negotiations with that prospect have terminated.

(C) When disclosing a final offer under clause (B), the department of commerce shall certify that the information being disclosed accurately and completely represents the terms of the final offer.

(6) Records that are intra-agency or interagency advisory or deliberative material, including material developed by a private contractor under a contract with a public agency, that are expressions of opinion or are of a speculative nature, and that are communicated for the purpose of decision making.

(7) Diaries, journals, or other personal notes serving as the functional equivalent of a diary or journal.

(8) Personnel files of public employees and files of applicants for public employment, except for:

(A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;

(B) information relating to the status of any formal charges against the employee; and

(C) information concerning disciplinary actions in which final action has been taken and that resulted in the employee being disciplined or discharged.

However, all personnel file information shall be made available to the affected employee or his representative. This subdivision does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name.

(9) Minutes or records of hospital medical staff meetings.

(10) Administrative or technical information that would jeopardize a recordkeeping or security system.

(11) Computer programs, computer codes, computer filing

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1 systems, and other software that are owned by the public agency  
 2 or entrusted to it and portions of electronic maps entrusted to a  
 3 public agency by a utility.

4 (12) Records specifically prepared for discussion or developed  
 5 during discussion in an executive session under IC 5-14-1.5-6.1.  
 6 However, this subdivision does not apply to that information  
 7 required to be available for inspection and copying under  
 8 subdivision (8).

9 (13) The work product of the legislative services agency under  
 10 personnel rules approved by the legislative council.

11 (14) The work product of individual members and the partisan  
 12 staffs of the general assembly.

13 (15) The identity of a donor of a gift made to a public agency if:

14 (A) the donor requires nondisclosure of his identity as a  
 15 condition of making the gift; or

16 (B) after the gift is made, the donor or a member of the donor's  
 17 family requests nondisclosure.

18 (16) Library or archival records:

19 (A) which can be used to identify any library patron; or

20 (B) deposited with or acquired by a library upon a condition  
 21 that the records be disclosed only:

22 (i) to qualified researchers;

23 (ii) after the passing of a period of years that is specified in  
 24 the documents under which the deposit or acquisition is  
 25 made; or

26 (iii) after the death of persons specified at the time of the  
 27 acquisition or deposit.

28 However, nothing in this subdivision shall limit or affect  
 29 contracts entered into by the Indiana state library pursuant to  
 30 IC 4-1-6-8.

31 (17) The identity of any person who contacts the bureau of motor  
 32 vehicles concerning the ability of a driver to operate a motor  
 33 vehicle safely and the medical records and evaluations made by  
 34 the bureau of motor vehicles staff or members of the driver  
 35 licensing advisory committee. However, upon written request to  
 36 the commissioner of the bureau of motor vehicles, the driver must  
 37 be given copies of the driver's medical records and evaluations  
 38 that concern the driver.

39 (18) School safety and security measures, plans, and systems,  
 40 including emergency preparedness plans developed under 511  
 41 IAC 6.1-2-2.5.

42 (c) Notwithstanding section 3 of this chapter, a public agency is not

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required to create or provide copies of lists of names and addresses, unless the public agency is required to publish such lists and disseminate them to the public pursuant to statute. However, if a public agency has created a list of names and addresses, it must permit a person to inspect and make memoranda abstracts from the lists unless access to the lists is prohibited by law. The following lists of names and addresses may not be disclosed by public agencies to commercial entities for commercial purposes and may not be used by commercial entities for commercial purposes:

- (1) A list of employees of a public agency.
- (2) A list of persons attending conferences or meetings at a state institution of higher education or of persons involved in programs or activities conducted or supervised by the state institution of higher education.
- (3) A list of students who are enrolled in a public school corporation if the governing body of the public school corporation adopts a policy:
  - (A) prohibiting the disclosure of the list to commercial entities for commercial purposes; or
  - (B) specifying the classes or categories of commercial entities to which the list may not be disclosed or by which the list may not be used for commercial purposes.

A policy adopted under subdivision (3) must be uniform and may not discriminate among similarly situated commercial entities.

(d) Nothing contained in subsection (b) shall limit or affect the right of a person to inspect and copy a public record required or directed to be made by any statute or by any rule of a public agency.

(e) Notwithstanding any other law, a public record that is classified as confidential, other than a record concerning an adoption, shall be made available for inspection and copying seventy-five (75) years after the creation of that record.

(f) Notwithstanding subsection (e) and section 7 of this chapter:

- (1) public records subject to IC 5-15 may be destroyed only in accordance with record retention schedules under IC 5-15; or
- (2) public records not subject to IC 5-15 may be destroyed in the ordinary course of business.

SECTION 8. IC 6-3.1-22 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2002]:

**Chapter 22. Contingent Public Utility Tax Credit**

**Sec. 1. As used in this chapter, "qualified taxpayer" means a public utility (as defined in IC 8-1-2-1).**

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1        **Sec. 2.** As used in this chapter, "state tax liability" means a  
 2        qualified taxpayer's total tax liability that is incurred under:

3        (1) IC 6-2.1 (the gross income tax);

4        (2) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);

5        or

6        (3) IC 6-3-8 (the supplemental net income tax);

7        as computed after the application of the credits that under  
 8        IC 6-3.1-1-2 are to be applied before the credit provided by this  
 9        article.

10       **Sec. 3.** The aggregate amount of tax credits that may be allowed  
 11       under this chapter may not exceed fifty million dollars  
 12       (\$50,000,000).

13       **Sec. 4.** The tax credits allowed under this chapter are contingent  
 14       upon the following and may not be awarded until after the  
 15       following sequence of events occurs:

16       (1) A qualified taxpayer must pledge to purchase the tax  
 17       credit from the Indiana venture capital fund before January  
 18       1, 2004.

19       (2) The Indiana venture capital fund must use the qualified  
 20       taxpayer's pledge to purchase a tax credit to obtain capital to  
 21       fund the investments of the Indiana venture capital fund.

22       (3) The Indiana venture capital fund determines that it must  
 23       sell the tax credit to meet the fund's obligations incurred  
 24       under subdivision (2).

25       (4) The qualified taxpayer purchases the tax credit from the  
 26       Indiana venture capital fund.

27       **Sec. 5.** The Indiana venture capital fund may sell tax credits to  
 28       a qualified taxpayer for one dollar (\$1) for each dollar of tax credit  
 29       granted to the qualified taxpayer.

30       **Sec. 6.** Before March 31 of each year, Indiana venture capital  
 31       fund shall certify to the department the amount of tax credits sold  
 32       under this chapter for the preceding calendar year.

33       **Sec. 7.** The aggregate amount of tax credits that may be allowed  
 34       under this chapter in a particular calendar year may not exceed  
 35       ten million dollars (\$10,000,000).

36       **Sec. 8.** A qualified taxpayer's tax credit allowed under section  
 37       5 of this chapter may not exceed the qualified taxpayer's state tax  
 38       liability for the particular taxable year. The amount of the credit  
 39       exceeding the qualified taxpayer's state tax liability may be carried  
 40       forward until the credit is fully used. However, the credit may not  
 41       be carried forward to a taxable year beginning more than ten (10)  
 42       years after the date the qualified taxpayer purchased the tax credit.



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SECTION 9. IC 21-6.1-3-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2002]: Sec. 9. (a) The board shall invest its assets with the care, skill, prudence, and diligence that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character with like aims. The board shall also diversify such investments in accordance with prudent investment standards.

(b) The board may:

- (1) make or have made investigations concerning investments; and
- (2) contract for and employ investment counsel to advise and assist in the purchase and sale of securities, subject to IC 5-10.2-2-15.

(c) The board is not subject to IC 4-13, IC 4-13.6, or IC 5-16 when managing real property as an investment. Any management agreements entered into by the board must ensure that the management agent acts in a prudent manner with regard to the purchase of goods and services. Contracts for the management of investment property shall be submitted to the governor, the attorney general, and the budget agency for approval. A contract for the management of real property as an investment:

- (1) may not exceed a four (4) year term and must be based upon guidelines established by the board;
- (2) may provide that the property manager may collect rent and make disbursements for routine operating expenses such as utilities, cleaning, maintenance, and minor tenant finish needs;
- (3) shall establish, consistent with the board's duty under IC 30-4-3-3(c), guidelines for the prudent management of expenditures related to routine operation and capital improvements; and
- (4) may provide specific guidelines for the board to purchase new properties, contract for the construction or repair of properties, and lease or sell properties without individual transactions requiring the approval of the governor, the attorney general, the Indiana department of administration, and the budget agency. However, each individual contract involving the purchase or sale of real property is subject to review and approval by the attorney general at the specific request of the attorney general.

(d) Whenever the board takes bids in managing or selling real property, the board shall require a bid submitted by a trust (as defined in IC 30-4-1-1(a)) to identify all of the following:

- (1) Each beneficiary of the trust.



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1 (2) Each settlor empowered to revoke or modify the trust.

2 (e) If, in accordance with its investment policy, the board makes  
3 a decision to invest a portion of its assets in alternative investment  
4 vehicles, the board shall invest at least ten percent (10%) of the  
5 amount allocated to alternative investment vehicles in the Indiana  
6 venture capital fund established under IC 4-4-30.

7 SECTION 10. [EFFECTIVE JANUARY 1, 2002] IC 6-3.1-22, as  
8 added by this act, applies to taxable years beginning after  
9 December 31, 2001.

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SENATE MOTION

Mr. President: I move that Senator Clark be added as coauthor of Senate Bill 562.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Energy and Economic Development, to which was referred Senate Bill No. 562, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 562 as introduced.)

WEATHERWAX, Chairperson

Committee Vote: Yeas 8, Nays 0.

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SB 562—LS 8099/DI 92+



## SENATE MOTION

Mr. President: I move that Senate Bill 562 be amended to read as follows:

Page 2, line 4, delete "authority" and insert "**fund**".

Page 2, delete lines 15 through 18.

Page 2, line 19, delete "(h)" and insert "**(g)**".

Page 2, line 22, delete "authority" and insert "**fund**".

Page 3, line 31, delete "authority" and insert "**fund**".

Page 3, line 32, delete "authority" and insert "**fund**".

Page 6, between lines 12 and 13, begin a new paragraph and insert:

**"Sec. 15. The assets of the fund consist of the following:**

**(1) capital obtained from the pledge of contingent tax credits authorized under IC 6-3.1-22; and**

**(2) money invested by the public employees' retirement fund or the teachers' retirement fund."**

Page 6, line 13, delete "Sec. 15" and insert "**Sec. 16**".

Page 6, line 14, after "capital" insert "**in qualified Indiana business**".

Page 6, line 16, delete "persons, firms, corporations or other entities" and insert "**investor groups**".

Page 6, delete lines 30 through 42, begin a new paragraph and insert:

**"Sec. 17. An investment by the fund in a qualified Indiana business is limited by the following:**

**(1) Each dollar of the fund's investment must be matched by at least two dollars (\$2) of private investment; and**

**(2) the fund's investment in any one qualified Indiana business may not exceed ten percent (10%) of the fund's assets."**

Page 7, delete lines 1 through 10.

Page 12, line 23, after "Sec. 14" and insert "**(a)**".

Page 12, between lines 25 and 26, begin a new paragraph and insert:

**"(b) Notwithstanding subsection (a), the boards of trustees of the fund may, consistent with investment policies adopted by the trustees of the fund, employ an alternative private capital investment advisor instead of the company.**

**(c) To employ an alternative private capital investment advisor under subsection (b), the boards of trustees of the fund must adopt a resolution, finding that:**

**(1) the company is not qualified to carry out the duties under Section 15 of this chapter; and**

**(2) that the alternative private capital investment advisor,**

SB 562—LS 8099/DI 92+



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**which the boards of trustees of the fund desire to engage, has its headquarters in Indiana."**

Page 14, delete lines 29 through 31, begin a new paragraph and insert:

**"(e) If, in accordance with its investment policy, the board makes a decision to invest a portion of its assets in alternative investment vehicles, the board shall invest at least ten percent (10%) of the amount allocated to alternative investment vehicles in the Indiana venture capital fund established under IC 4-4-30."**

Page 23, delete lines 4 through 6, begin a new paragraph and insert:

**"(e) If, in accordance with its investment policy, the board makes a decision to invest a portion of its assets in alternative investment vehicles, the board shall invest at least ten percent (10%) of the amount allocated to alternative investment vehicles in the Indiana venture capital fund established under IC 4-4-30."**

Renumber all SECTIONS consecutively.

(Reference is to SB 562 as printed February 14, 2001.)

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